

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BOBBY E. BURTON,

Plaintiff,

OPINION AND ORDER

v.

13-cv-292-wmc

INMATE TRUST FUND,

Defendant.

Plaintiff Bobby E. Burton is a state inmate in the Texas Department of Criminal Justice at the Coffield Unit, which is located in East Texas. Burton has nevertheless filed a complaint in this court pursuant to 42 U.S.C. § 1983, seeking monetary relief from the TDCJ Inmate Trust Fund. He is *pro se* and he seeks leave to proceed *in forma pauperis*. That motion will be denied and this case will be dismissed for reasons set forth briefly below.

As is self-evident, neither party to this suit has any connection to the Western District of Wisconsin, meaning that the complaint was not properly filed here. *See* 28 U.S.C. § 1391(b). While this court has the authority to transfer a case in the interest of justice to another district in which the action might have been brought, 28 U.S.C. §§ 1404, 1406, court records show that Burton has already filed an identical lawsuit against the same defendant in the United States District Court for the Eastern District of Texas, where the Coffield Unit is located. *See Bobby E. Burton v. Inmate Trust Fund*, 6:13-cv-348 (E.D. Tex.). Because the complaint duplicates another previously filed federal action, this case is subject to dismissal pursuant to 28 U.S.C. § 1915A(b) as “malicious.” *See Lindell v. McCallum*, 352 F.3d 1107, 1109-10 (7th Cir. 2003) (citing *Pittman v. Moore*,

980 F.2d 994, 995 (5th Cir. 1983) (noting that it is “malicious” for a *pro se* litigant to file a lawsuit that duplicates allegations of another pending federal lawsuit by the same plaintiff) (citations omitted)).

ORDER

IT IS ORDERED that:

1. The motion for leave to proceed filed by plaintiff Bobby E. Burton (TDCJ #836846) is DENIED and this case is DISMISSED as malicious for purposes of 28 U.S.C. § 1915A(b).
2. The clerk of court will provide a copy of this order to the plaintiff; to the TDCJ Office of the General Counsel, P.O. Box 13084, Capitol Station, Austin, TX 78711; and to the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas, 75702, Attention: Manager of the Three-Strikes List.

Entered this 2nd day of May, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge